



December 22, 1999

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
Post Office Box 4004  
Huntsville, Texas 77342

OR99-3745

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130102.

The Texas Department of Criminal Justice (the "department") received a request for all documents, specifically to include findings by the Patient Liaison Program, that relate to an investigation into the denial of medical treatment to the son of the requestor. You contend that the responsive information is excepted from public disclosure by sections 552.101 and 552.131 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>1</sup>

We note that the department received a written request for this information on July 14, 1999 and your request for our decision regarding that written request is postmarked September 30, 1999 and was received by this office on October 4, 1999. Thus, the department failed to request an open records decision from this office within the ten day statutory period as required under Government Code section 552.301. This failure to timely request a decision results in the legal presumption that the requested information is open to the public. Gov't Code §552.302. This presumption can be overcome only by a compelling demonstration that the information should not be released, *e.g.*, where it is

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<sup>1</sup>This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of Ruiz v. Collins, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that Ruiz is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). We find that section 552.131 is a mandatory exception and consequently constitutes a compelling demonstration that information should not be released. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we consider your argument regarding section 552.131.

Section 552.131 reads

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or

(2) information about an inmate sentenced to death.

(c) This section does not affect whether information is considered confidential or privileged under Section 508.313.<sup>2</sup>

(d) A release of information described by Subsection (a) to an eligible entity, as defined by Section 508.313(d), for a purpose related to law enforcement, prosecution, corrections, clemency, or treatment is not considered a release of information to the public for purposes of Section 552.007 and does not waive the right to assert in the future that the information is excepted from required disclosure under this section or other law.

Section 552.131 is explicitly made subject to section 552.029. This section, titled "Right of Access to Certain Information Relating to Inmate of Department of Criminal Justice," reads

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<sup>2</sup> Government Code section 508.313(a) makes confidential all information obtained and maintained by the Board of Pardons and Paroles that regards an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency; a releasee; or a person directly identified in any proposed plan of release for an inmate.

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.029:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

These provisions specify categories of inmate information that are "subject to required disclosure," exclude certain other categories from their ambit, and except all unspecified categories of inmate information from disclosure. We are of the opinion that by detailing the categories of inmate information that can be released, the legislature intended that all other inmate information not be released. Therefore, with the exception of the information specified as subject to public disclosure in section 552.029 and the information excluded by section 552.131(b) of the Government Code, all information obtained or maintained by the Texas Department of Criminal Justice about an inmate who is confined in a facility operated by or under a contract with the department is made confidential by Government Code section 552.131.

We construe the term “basic information” in section 552.029(8) to comport with the use of that term in section 552.108(c) of the Government Code. In that context, this office has considered “basic information” to be analogous to the “front page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Such information regarding use of force incidents includes the time and place of such an incident, the names of inmates and officials of the department who were directly involved in such an incident, a brief narrative of the incident, a brief description of any injury sustained, and information regarding any criminal charges or disciplinary actions that resulted from the incident.

From our review of the submitted information, we conclude that it is “about an inmate” and that it is not in a category that is made subject to public disclosure by section 552.029 or excluded by section 552.131(b) from the categories of information excepted from disclosure by section 552.131.<sup>3</sup> The information responsive to this request must therefore be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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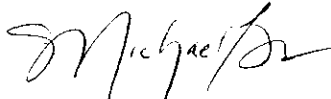
<sup>3</sup>We note that the submitted materials include medical and psychiatric records. We are of the opinion that these detailed records are not “general state of health or the nature of an injury to or critical illness suffered by the inmate” information under section 552.029(1). These records may, with proper authorization, be subject to disclosure under other law. See e.g. Health & Safety Code § 611.002; Occ. Code § 159.002. However, such a release may be prohibited by *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff’d in part and vacated in part*, 679 F.2d 1115 (5<sup>th</sup> Cir.), *amended in part*, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). As no valid authorization for release of these records has been presented, we do not address the release of this information under other statutes.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 130102

Encl. Submitted documents

cc: Mr. William T. Habern  
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(w/o enclosures)

Ms. Denise Thompson  
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